

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 21, 2000

JOINT PETITION OF

POWERGEN plc, LG&E ENERGY CORP.

CASE NO. PUA000020

and

KENTUCKY UTILITIES COMPANY, d/b/a
OLD DOMINION POWER COMPANY

For approval of a merger

FINAL ORDER

On March 24, 2000, PowerGen plc ("PowerGen"), LG&E Energy Corp. ("LG&E Energy"), and Kentucky Utilities Company, d/b/a Old Dominion Power Company ("KU"), (collectively, the "Petitioners") filed a joint petition requesting approval, pursuant to § 56-88.1 of the Code of Virginia (the "Code"), of a proposed transaction whereby LG&E Energy will merge into PowerGen. Under the terms of the Agreement and Plan of Merger ("Merger Agreement"), the stock of LG&E Energy, the parent company of KU, will be acquired by PowerGen.

The Petitioners also request that the Commission determine that neither LG&E Energy nor PowerGen or any intermediate company between LG&E Energy and PowerGen will, by reason or ownership of all outstanding shares of common stock of LG&E Energy, be a public service company as defined in § 56-1 of

the Code.

Further, the Petitioners request that the Commission certify to the Securities and Exchange Commission ("SEC") under Section 33(a)(2) of the Public Utility Holding Company Act of 1935 ("the 1935 Act") that the Commission has the authority and resources to protect the ratepayers of KU subject to its jurisdiction and that it intends to exercise that authority.

PowerGen is a public limited holding company formed in 1998 under the laws of England and Wales and is engaged in regulated and unregulated power activities around the world. PowerGen, through its subsidiaries, owns and operates cogeneration projects, nine power stations in England and Wales, and a regulated electric distribution utility known as East Midlands Electricity. It also develops independent power projects in Europe, India, and the Asian Pacific area. PowerGen conducts energy trading, shipping, and gas pipeline operations, is a leading developer and operator of cogeneration, and is involved in renewable energy ventures.

LG&E Energy is a corporation organized under the laws of the Commonwealth of Kentucky. LG&E Energy is an exempt holding company under the 1935 Act and is engaged in cogeneration, independent power projects, exempt wholesale generation, and the ownership and operation of two retail electric and gas

distribution utilities, known as Louisville Gas and Electric Company and KU¹.

KU is a public service corporation organized pursuant to the laws of the Commonwealth of Kentucky and the Commonwealth of Virginia. In Kentucky, KU provides retail electric service to approximately 478,000 customers in 77 counties and wholesale service to several municipalities. In Virginia, KU conducts business under the name Old Dominion Power Company ("ODP") and provides retail electric service to approximately 29,000 customers in five southwestern counties. ODP does not have any wholesale customers in Virginia.

On February 25, 2000, the Boards of Directors of PowerGen and LG&E Energy approved the Merger Agreement and executed the agreement on February 27, 2000. Under the terms of the Merger Agreement, LG&E Energy will merge with PowerGen Acquisition, a corporation to be formed and indirectly owned by PowerGen for the purpose of facilitating the merger. LG&E Energy will survive the merger, and PowerGen Acquisition will cease to exist, resulting in LG&E Energy becoming a wholly owned subsidiary of PowerGen.

PowerGen will acquire 100 percent of all outstanding shares and share options of LG&E Energy common stock. The holders of

¹ By Order dated January 20, 1998, in Case No. PUA970041, the Commission approved the merger of KU's then parent company, KU Energy Corporation, with and into LG&E Energy with LG&E Energy being the surviving company.

LG&E Energy common stock will not become shareholders of PowerGen, but instead will receive \$24.85 per share in cash. The purchase price represents a premium of 58 percent above the closing price (\$15.75) of LG&E Energy shares on February 25, 2000, the last trading day prior to the merger announcement. The value of equity, on a fully diluted basis, is \$3.2 billion. Upon completion of the merger, there will be no publicly traded shares of LG&E Energy stock. LG&E Energy will continue to own 100 percent of the issued and outstanding common stock of LG&E and KU. LG&E's and KU's outstanding preferred stock will not be changed, converted, or otherwise exchanged as a result of the merger. In addition, PowerGen will assume all the debt of LG&E Energy and its subsidiaries, which totals approximately \$2.2 billion as of December 31, 1999. Thus, the total value of the acquisition is approximately \$5.4 billion.

Furthermore, the Petitioners state that there will be additional companies between LG&E Energy and PowerGen. These intermediate companies will be, directly or indirectly, wholly owned by PowerGen and will have no public or private institutional equity or debt holders. The Petitioners state that such structures are typical for UK-US cross border transactions and will exist primarily for the purpose of creating an economically efficient and viable structure for completing the merger transaction.

Once the merger becomes effective, the Petitioners state that PowerGen will increase the size of its board of directors to allow LG&E Energy's Chief Executive Officer to be appointed. In addition, LG&E's Chief Executive Officer will also serve as Chairman and Chief Executive Officer of LG&E Energy. LG&E Energy's Board of Directors will be dissolved and replaced with a three-member board and an Advisory Board. PowerGen also intends to retain the existing LG&E Energy, LG&E, and KU senior management team.

The Petitioners state that KU will continue to function as a public utility subject to the regulatory jurisdiction of the Virginia State Corporation Commission, the Kentucky Public Service Commission, and, to the extent required by applicable law, the Tennessee Regulatory Authority. In addition, the Federal Energy Regulatory Commission ("FERC") will continue to regulate KU's transmission services and wholesale rates.

The shareholders of PowerGen and LG&E approved the Merger Agreement on June 5 and June 7, 2000. The merger was also approved by the Public Service Commission of Kentucky on May 15, 2000, and by FERC on June 28, 2000. The Petitioners are awaiting approval from the SEC.

PowerGen and the intermediate companies are expected, subject to SEC approval of the merger, to register as holding companies under the 1935 Act. As registered holding companies,

they will be subject to various statutory and administrative requirements. As part of the merger approval process, the SEC will review the Petitioners' non-utility operations and the corporate structure proposed for the merged company. In addition, the SEC will request certification that the Virginia State Corporation Commission has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise such authority.

Registration under the 1935 Act will also impose a number of restrictions on the operations of PowerGen and its subsidiaries. The restrictions include such things as requiring advance approval of securities issuance, sales and acquisitions of utility assets, acquisitions of other businesses, prohibiting PowerGen subsidiaries from providing certain services to each other, and limiting the ability of PowerGen and its subsidiaries from engaging in various businesses. The Petitioners state that LG&E Energy currently has four first tier subsidiaries², and, in order to comply with the 1935 Act, will add a service company, LG&E Energy Services, Inc. ("LG&E Services"), to that tier. LG&E Service will provide utility and non-utility subsidiaries

² The first tier subsidiaries of LG&E Energy are LG&E, KU, LG&E Capital Corp., and LG&E Energy Marketing, Inc.

and affiliates in the PowerGen group with administrative, management, and support services.³

The Petitioners state that the merger is intended to allow LG&E Energy and its utility subsidiaries, LG&E and KU, to become part of a larger international enterprise that will provide the size and scale that, they represent, have become critical and necessary prerequisites to success in an energy industry that has entered a period of accelerating evolution, rapid deregulation and regulatory change, and increased competition. By becoming part of PowerGen, KU states it will be better able to utilize beneficial developments in transmission and distribution technology, information systems, and capital markets. In addition, PowerGen's experience in the United Kingdom and other countries is expected to provide help in advancing KU's efforts in the wholesale market, as well as in preparing KU for restructuring and competition.

KU further contends that the merger will bring benefits to customers, employees, LG&E Energy's shareholders (a number of whom are residents of Virginia), and the Commonwealth of Virginia. After the merger, KU will have the financial,

³ The Petitioners state that they will file a separate application pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Affiliates Act") requesting the Commission to exempt ODP from all of the requirements of § 56-77A or, in the alternative, approve a service agreement between LG&E, ODP, and LG&E Services.

technical, and managerial capabilities that are needed to provide efficient customer service. Petitioners represent that customers should benefit from improved service quality and energy efficiency resulting from the reciprocal adoption of "best practices". For employees, the merger represents an opportunity for growth as the existing KU affiliated group becomes the U.S. base of operations for a large international entity.

PowerGen pledges to maintain the same commitment to KU that was exhibited by LG&E Energy and KU Energy Corporation, and it is firmly committed to maintaining and supporting the relationships between KU and the communities it serves. KU will maintain its separate existence, will keep its headquarters in Lexington, Kentucky, and will also maintain its connections and commitments to southwestern Virginia.

On May 12, 2000, the Commission issued an order directing the Petitioners to provide public notice of their petition and to provide an opportunity for interested persons to comment and request a hearing. The Commission also directed its Staff to file a report detailing the results of its investigation of the matter.

There were no comments or requests for hearing filed in this proceeding.

Pursuant to a May 12, 2000, Order Extending Procedural

Schedule, Staff filed its Report on July 5, 2000. In its Report, Staff stated that it appears that there will be no direct change in the relationship between LG&E Energy and KU other than the inclusion of LG&E Services as a direct affiliate of LG&E Energy. Staff also stated that it believes that ODP is subject to the provisions of § 56-590 of the Code. Staff recommended that the Commission address the matter of Petitioners' request for certification when the SEC submits a letter requesting the same. Staff also recommended approval of the joint petition subject to certain conditions as addressed herein.

There was no response to Staff's Report filed by either the Petitioners or any interested person.

On July 13, 2000, Staff, on behalf of itself and the Petitioners filed a motion wherein it requested that the Commission approve the Memorandum of Agreement ("MOA") attached thereto. The MOA is designed to resolve all issues between Staff and the Petitioners and to ensure that the statutory standard set out in § 56-90 of the Code is met.

NOW THE COMMISSION, having considered the joint petition, the Staff Report, and the proposed MOA, is of the opinion and finds that the MOA should be approved without modification. We find, consistent with the requirements of § 56-90 of the Code, that the provisions of the MOA will ensure that adequate service

to the public at just and reasonable rates will not be impaired or jeopardized. We will not address in this proceeding the Petitioners' request regarding a determination that neither LG&E Energy, PowerGen, nor any intermediate company will be a public service company as defined in § 56-1. We will defer our consideration of the requested certification to the SEC until such time as we receive a request from that regulatory agency.

Accordingly, IT IS ORDERED THAT:

(1) The Agreement and Plan of Merger is hereby approved subject to the terms and conditions of the Memorandum of Agreement.

(2) The Memorandum of Agreement is adopted in full herein, and the Petitioners are ORDERED to comply with its terms and the conditions established therein.

(3) Except to the extent set out in the Memorandum of Agreement adopted above, this Order shall have no ratemaking implications.

(4) There being nothing further to be done in this matter, it is hereby dismissed.